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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA

10 Plaintiff,

11 v.

12 HENRY C. ROSENAU,

Defendant.

Case No. CR06-157-MJP

DETENTION ORDER

13 Offenses charged:

14 Conspiracy to Import Marijuana;
15 Conspiracy to Distribute Marijuana; and
16 Possession of Marijuana with Intent to Distribute.

17 Date of Detention Hearing: October 28, 2011.

18 The Court, having conducted a detention hearing pursuant to Title 18 U.S.C. § 3142(f),
19 and based upon the factual findings and statement of reasons for detention hereafter set forth,
20 finds that no condition or combination of conditions which the defendant can meet will
21 reasonably assure the appearance of the defendant as required and the safety of any other person
22 and the community.

FINDINGS OF FACT AND STATEMENT OF REASONS FOR DETENTION

23 Defendant is charged with drug offenses for which detention is presumed. Despite this,

1 the Court fashioned an appearance bond and ordered defendant released on May 4, 2011. On
2 July 24, 2011, defendant admitted he violated his appearance bond by possessing marijuana.
3 The Court modified his appearance bond and allowed defendant to remain in the community. On
4 October 26, 2011, a petition was filed alleging defendant violated his appearance bond by having
5 indirect contact with a Kip Whelpey, a witness in his case, on October 20, 2011. On October 28,
6 2011, the Court conducted an evidentiary hearing on this allegation. Based on the evidence
7 presented, the Court found defendant had indirect contact with Mr. Whelpey in violation of his
8 conditions of release.

9 Mr. Whelpey is a witness the government intends to call against defendant. According to
10 the government, Mr. Whelpey conspired with defendant to commit the drug offenses. Mr.
11 Whelpey has already pled guilty and served his prison sentence. As part of his plea agreement,
12 he agreed to appear as a witness at defendant's trial this year. However, earlier this year, a civil
13 action was initiated in Canada. The named plaintiff is defendant and the action was brought
14 against Mr. Whelpey, essentially for defamation and alleging Mr. Whelpey has lied about
15 defendant's criminal conduct.

16 The Court need not decide the propriety of this Canadian lawsuit as that issue is not
17 material to decide whether defendant had indirect contact with Mr. Whelpey, which is the
18 violation before the Court. Instead, focusing on the evidence regarding whether defendant had
19 indirect contact with the witness, the Court first finds, U.S. and Canadian counsel for defendant
20 did not initiate the lawsuit and were not involved in contacting Mr. Whelpey. Hence, this is not
21 a case where counsel was fulfilling his proper functions as a lawyer by investigating or
22 contacting witnesses.

23 Second, in June 2011, defendant's pretrial supervising officer reviewed with defendant a

1 written list of witnesses that defendant was not to have contact with. That list included Mr.
2 Whelpley. Defendant told his pretrial supervising officer he did not know any of the witnesses, a
3 claim that is belied by the fact he had been involved in a lawsuit against Mr. Whelpley for many
4 months.

5 Third, defendant is the named plaintiff in his Canadian lawsuit and the sole beneficiary.
6 If he prevails, he will have succeeded in not only obtaining money damages against Mr.
7 Whelpley but also succeeded in preventing Mr. Whelpley, a key government witness, from
8 testifying against him. His direct interest as the sole beneficiary of his Canadian lawsuit
9 evidences his indirect contact with Mr. Whelpley.

10 Fifth, defendant's claim the contact with Mr. Whelpley is the product of an
11 uncontrollable non-lawyer named Paddy Roberts, is unpersuasive. Even if Mr. Roberts initiated
12 the Canadian suit in January 2011, without consulting defendant, defendant has done nothing to
13 reign Mr. Robert's in or direct him to have no contact with Mr. Whelpley. In fact, it appears
14 defendant has succeeded, via Mr. Robert's actions, in obtaining an order directing Mr. Whelpley
15 to pay money damages and prohibiting him from entering the United States. Defendant cannot
16 have his cake and eat it too. He cannot be the sole beneficiary of a law suit against a key
17 government witness and then turn around and claim no responsibility.

18 Based on the evidence presented, the Court concludes defendant violated the condition of
19 release that he have no indirect contact with the witnesses in this case. The Court also concludes
20 revocation and detention are appropriate at this point given the nature of the offense and the
21 nature of the violation. The violation does not involve a technicality such as failing to submit a
22 monthly report. Instead, the conduct involved in this case involves sophisticated actions to
23 influence and prevent a witness in this case from appearing and testifying in this case.

1 It is therefore **ORDERED**:

2 (1) Defendant shall be detained pending trial and committed to the custody of the
3 Attorney General for confinement in a correctional facility separate, to the extent practicable,
4 from persons awaiting or serving sentences, or being held in custody pending appeal;

5 (2) Defendant shall be afforded reasonable opportunity for private consultation with
6 counsel;

7 (3) On order of a court of the United States or on request of an attorney for the
8 Government, the person in charge of the correctional facility in which defendant is confined shall
9 deliver the defendant to a United States Marshal for the purpose of an appearance in connection
10 with a court proceeding; and

11 (4) The clerk shall direct copies of this order to counsel for the United States, to
12 counsel for the defendant, to the United States Marshal, and to the United States Pretrial Services
13 Officer.

14 DATED this 28th day of October, 2011.

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17 BRIAN A. TSUCHIDA
18 United States Magistrate Judge
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